No. 99 817 JUL 12 1999

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In The

Supreme Court of the United States

October Term 1999

IN RE: WILLIAM COY ARNETT,

Petitioner,

vs.

UNITED STATES OF AMERICA,
National Highway Traffic Safety Administration,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether I, William Coy Arnett, have standing or the right to file suit challenging the constitutionality of an egregiously wrong statute.

2. Whether the Supreme Court has jurisdiction over the subject matter of this action which also seeks to invalidate a promulgated federal motor vehicle standard where judicial review of those regulations is committed by statute exclusively to the Court of Appeals, and can stop the air bag juggernaut.

Page

TABLE OF CONTENTS

Questions Presented i

Table of Contents ii

Statutes Cited iii

Cases Cited iii

Other Authority Cited iii

Opinions Below 1

Statement of Jurisdiction 1

Statement of the Case 1

Reasons for Granting Writs 2

Conclusion 8

Contents

STATUTES CITED *Page*

Title 15 U.S.C. § 1392(a) 6

Title 28 U.S.C. § 1254(1) 1

Title 28 U.S.C. § 1651(a) 3

Title 49 U.S.C. § 30111(a) .....1 & 6

Title 49 U.S.C. § 30122 2

Title 49 U.S.C. § 30127.....2 & 4

CASES CITED

Barrus v. Sylvania 55 F. 3d 468, 469.....7 & 2a

Connection Dist. Co. v. Reno 154 F. 3d 281, 295 .....7 & 2a

Hackford V. Babbitt 14 F. 3d 1457, 1465.....7 & 2a

Motor Vehicle Mfgr. Assn. v. State Farm Mutual Ins. Co.

463 U.S. 35 3

463 U.S. 38 3

463 U.S. 58 6

State Farm Mutual Ins. v. Department of Transportation

680 F. 2d 224 4

Steel Co., v. Citizens for A Better Environment

523 U.S. 83,_____, 118 S. Ct. 1003, 1016-18 (1998) ....7 & 2a

OTHER AUTHORITY CITED

Amendment v. The Constitution of the United States 2

Contents
APPENDIX

Page

Appendix A — Opinion of the United States Court of Appeals for the Sixth Circuit decided April 23, 1999. .....1a

I, William Coy Arnett, respectfully petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision of the United State Court of Appeals for the Sixth Circuit was rendered on April 23, 1999. This case was not reported as of June 7, 1999.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is involked pursuant to Title 28 U.S.C. § 1254 (1). This petition has been filed within ninety days of April 23, 1999, the date on which the Court of appeals for the Sixth Circuit affirmed the district courts dismissal of this suit on grounds that I lacked standing to pursue this claim and the district court lacked authority to issue the requested orders. I did not request a rehearing as I filed suit originally to seek access to this Court.

STATEMENT OF THE CASE

This case arises out of my inability to get government officials, members of congress, or members of the news media to report the truth about air bags - they are not effective, and do not meet the need for motor vehicle safety as required by Title 49 U.S.C. § 30111 (a).

I filed suit, pro se, on July 11, 1997 requesting that the district court declare Title 49 U.S.C. § 30127, which requires automobile manufacturers to install air bags in vehicles, and Title 49 U.S.C. § 30122, which prohibits repair shops from making safety devices inoperable, unconstitutional as related to air bags, as a violation of Amendment V of the Constitution of the United States as the devices are not only not effective, but they are inherently dangerous.

I also requested that an order be issued requiring all manufacturers of vehicles to immediately stop installing inflatable restraints or air bags in their vehicles and an order directing them to recall all vehicles with frontal air bags. There have been more than 50 million frontal air bags installed in vehicles since this suit was filed. I also requested that a special prosecutor be appointed to investigate why officials at NHTSA took action to protect the interests of the Air Bag Cabal instead of the American motorists.

REASONS FOR GRANTING THE WRIT

This suit was filed only after about seven years of collecting data which shows that air bags are not effective - and it was common knowledge that they are killing and injuring motorists. The Court of Appeals for the Sixth Circuit affirmed the lower court's dismissal of this suit on the grounds that I have no right (standing) to bring this action. I have now purchased two automobiles which are equipped with driver and passenger air bags at a cost of about $1,000 each vehicle for the air bags. I can not enter a vehicle equipped with an air bag feeling secure that the device will not deploy thereby injuring or even killing me. I have had my head within three or four inches of the air bag on more than one occasion. It is ludicrous to me that the attorneys for NHTSA claim I have no right to bring this suit because I have not been injured (or killed).

Lives are at stake, and I could find no other way to attempt to stop the air bag juggernaut.

Would I not have a right to bring suit if a business man installed a booby trap at the door of business I frequent? Air bags are very closely related to booby traps and I do not believe any court would deny me the right to attempt to force removal of a booby trap.

This is an extraordinary petition requesting an extraordinary writ under provisions of Rule 20 and 28 U.S. C. § 1651 (a). The air bag juggernaut must be stopped and the officials at NHTSA have not shown any propensity to act in the best interests of the American motorists.

The air bag proponents, whether intentionally or inadvertently, have made claims for the air bags which are not true. They have deceived the courts as well as the American people.

They told this Court in Motor Vehicle Manufacturers Assn. v State Farm Mutual Insurance Company in 463 U.S. 35 that

> The lifesaving potential of these devices was immediately recognized, and in 1977, after substantial on-the-road experience with both devices, it was estimated by NHTSA that passive restraints could prevent approximately 12,000 deaths and over 100,000 serious injuries annually.
> 42 Fed. Reg. 34298.

Similarly at 463 U.S. 38

> "When all cars are equipped with automatic crash protection systems, each year an estimated 9,000 more lives will be saved, and tens of thousands of serious injuries will be prevented", NHTSA, Automobile Occupant Crash Protection, Progress Report No. 3, p. 4; App. in No. 81-2220 (CADC), p. 1627.

Data from Fatality Facts, published by the Insurance Institute for Highway Safety from data supplied in part by the Department of Transportation, shows that frontal impacts accounted for 51 percent of passenger vehicle deaths in 1989 and 1992 thru 1997. Since there were 32, 073 reported passenger vehicle fatalities in 1997, a drop of 1 percent (to 50%) would have meant that only about 320 lives had been saved by the something like 80 million frontal air bags plus greater usage of seat belts.

I have copies of letters from an official at NHTSA dated 1991 and June 3, 1994 which lowered the claimed number of lives which air bags will save once all vehicles are so equipped to 6,190 and 2,840 respectively. These letters were in response to my letters to a Senator in which I showed that air bags were not meeting the claims of the proponents. They now have at least 4 more years of data which if extrapolated would lower the 2,840 number to less than 1,000. This is a mere 3 percent of the some 32,000 motorists killed annually in passenger vehicles.

Would you agree to buy a pseudo safety device which could kill you but offer less than a 5 percent chance of saving your life? You, I, and the American people have no choice if we buy a new automobile or one of the something like 80 million used ones thanks to the law and rules which prompted this suit. Similarly, a repair shop is not permitted to disarm the air bag for those who know that they are hazardous and can be deadly because of Title 49 U.S.C. § 30127.

In State Farm Mutual Auto. Ins. v Department of Transportation, 680 Federal Reporter, 2d Series 224, we find:

> At 33,330 (Senator Baker) (Supporting standard because there is ample evidence indicating that air bags are effective in preventing injuries, that they would save thousands of lives and prevent many more injuries annually if installed on all cars, and that they are not hazardous.)

First, air bags are hazardous and they have not, and will not, save thousands of lives. Air bags are inherently dangerous. Officials at NHTSA were admitting that air bags had killed about 60 motorists in early 1997. The number was reportedly about 120 in early 1999 - a 100 percent increase in about 2 years. I believe many more motorists are being killed by air bags in crashes of about 10 to 35 miles per hour, but the deaths are being attributed to "the accident".

Officials at NHTSA reportedly claimed that air bags saved about 1,700 lives from 1986 thru 1996. More than 425,000 motorists lost their lives during that period with about 318,000 of them being in passenger vehicles. They reportedly claimed in early 1999 that air bags had saved 3,625 lives. This means they are claiming that air bags saved about 1,900 lives in 1997 and 1998. Since air bags did not save 320 lives in 1997 according to data from Fatality Facts, there is no way they saved close to 1,500 lives in 1998. The officials at NHTSA apparently are not concerned with the accuracy of their claims.

Government officials recorded more than 300,000 air bag related injuries in 1995 alone according to a June 1997 newspaper article. While most of the injuries were minor, about 6,000 were moderate to serious or fatal.

Passenger vehicle fatalities were 29, 457 motorists in 1992 and 32, 073 in 1997 - an 8 percent increase. There were more than 80,000,000 more frontal air bags in vehicles in 1997 than in 1992. Where are all of those lives which are claimed to have been saved by air bags showing up? Except in estimates which are based on false assumptions.

The attorneys for NHTSA states in the Defendant-Appellees brief that NHTSA has undertaken several rule making actions to address injuries and deaths due to air bags. One rule requires vehicle manufacturers to place air bag warning labels in the vehicle cabin. This is an admission that they know that air bags are hazardous!

Any device, whether claimed to be a safety device or otherwise, dangerous enough to require a WARNING LABEL is too dangerous to be installed in the occupant cabin of a motor vehicle.

The Occupational Safety and Health Administration would not permit an air bag in a workplace especially in a confined space like the occupant cabin of a motor vehicle. The Consumers Product Safety Commission would have ordered a recall as early as July 1996 when USA Today reported that air bags can be deadly. NHTSA, however, merely blames the motorists - they are female and short, did not use their seat belts, were small children , were passengers in the front seat - and issues more rules.

Justice Rehnquist wrote in Motor Vehicle Manufacturers Association v State Farm Mutual Insurance Company, 463 U.S. 58, that:

> The statute that requires the Secretary of Transportation to issue motor vehicle safety standards also requires that "(e)ach such---standard shall be practical (and) shall meet the need for motor vehicle safety." 15 U.S.C. § 1392 (a) (1976 ed., Supp. V).

Air bags clearly do not meet the need for motor vehicle safety! While 15 U.S. C. § 1392 (a) has been repealed, it was replaced by Title 49 § 30111 (a) which reads in part, --- "meet the need for motor vehicle safety ---".

The air bag proponents have made numerous proposals for air bags to be located in various positions in automobile cabins. Some manufacturers are installing side impact air bags in the sides of their vehicles. What would you think of someone who tried to convince you that if a 2 inch air bag exploded from a boxing glove upon impact with an opponents head the blow would be less severe? That is the same thing I think of anyone who tries to convince me that a side impact air bag is beneficial.

A vehicle traveling at a mere 15 miles per hour goes 2.2 feet in one tenth of a second. The occupant is hit simultaneously by the door and the force of the air bag. Side impact air bags are detrimental. Why the members of the Society of Automobile Engineers do not understand this is beyond my comprehension.

The attorneys at NHTSA have cited numerous cases to show that I have no right (standing) to bring this action. I was not able to find case law to support my position, however, morally they are in quicksand while I am on bedrock in this matter.

The Sixth Circuit Court of Appeals cited Connection Distributing Co. v Reno, 154 F 3d 281, 295; Barrus v Sylvania, 55 F 3d 468, 469; and Hackford v Babbitt 14 F 3d 1457, 1465 to show that I did not have standing because I did not allege and prove a distinct and palpable injury. These cases were not even similar to this case which is an attempt to stop the injuries and killing of innocent motorists.

They also cited Steel Co. v Citizens for a Better Environment, 523 U.S. 83, ___, 118 S. Ct. 1003, 1016-18 (1998). This case was regarding the failure of a company to timely report emissions. Would the outcome have been the same if those emissions had been killing citizens who lived near the plant? I certainly hope not.

Two air bag equipped Chrysler LeBaron cars reportedly crashed in March 1990 in Culpeper County, Virginia. The news media reported that the air bags saved the drivers' lives. Subsequently, a television commercial at first showing a photograph of the smashed cars, was run frequently for several months claiming an air bag will save your life.

An air bag proponent sent a copy of a newspaper article, which included a photograph of the damaged cars, to me as evidence of the effectiveness of air bags. The photograph showed clear indications that the crash was staged. I wrote a letter stating that it was no accident and sent it to my representatives in congress. Representative Carroll Hubbard sent my letter to NHTSA for their response.

An official at NHTSA wrote on June 10,1991 that, "The Television commercial, which showed an offset frontal car-to-car crash, was staged to demonstrate a Chrysler driver restraint system. That particular system consists of manually fastened lap and shoulder belts supplemented by an air bag. This staged crash employed stunt drivers."

The crash in March 1990 was staged and the officials at NHTSA knew it even if they did not participate. The purpose was to deceive the American motorists if not congress and the courts.

I stopped writing letters in opposition to air bags in 1991 when an official at NHTSA wrote that they had lowered the number of lives the believed air bags would save annually to 6,190. I started again in 1993 when I heard an air bag proponent proclaim that air bags saved so many lives in 1992 that <u>we</u> are now going to put air bags in sides of cars.

The number of air bags equipped cars was relatively small in 1992 and I soon had evidence in the form of <u>Fatality Facts</u> which showed that few, if any, lives had been saved by air bags that year.

Attorneys for the Department of Justice should have filed amicus curise briefs in support of my attempt to correct this wrong. However. instead, I was arrested by an employee of the Department of Justice (FBI) and incarcerated for almost 7 1/2 months. Other employees of the Department of Justice (Marshals and Bureau of Prison personnel) harassed me.

CONCLUSION

Air bags are not effective, are injuring and killing motorists, and have been promoted by fraud, deceit and deception. If the writer of the news article which stated that there were about 300,000, injuries recorded in 1995 alone was correct, there have now been more than 1 million physical injuries caused by air bags. While most of the injuries were minor, about 20,000 of them wre moderate, serious, or fatal.

Data from Fatality Facts shows that air bags are not saving thousands of lives as claimed by officials at NHTSA and other air bag proponents. The officials at NHTSA refuse to tell the American people the truth.

Congress had a right to enact the air bag mandates, however, they now have a duty and obligation to repeal the mandates. I have not heard of any thing which would indicate that they plan to do so.

Therefore, this Court must issue a writ of certiorari and a writ of mandamus to stop the air bag juggernaut.

Respectfully submitted

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Copies of this petition will be sent by certified mail to the attorneys at The National Highway Traffic Safety Administration and the Solicitor General of the United States.

No. 98-5198

UNITED SATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIAM COY ARNETT,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA; THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION,	)	ORDER
	)	
	)	
Defendants-Appellees.	)	

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 206 limits citation to specific situations. Please see Rule 206 before citing in a proceeding in a court in the Sixth Circuit. If cited, a coy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

Before: SILER and MOORE, Circuit Judge; SMITH, District Judge.*

William Coy Arnett, proceeding pro se, appeals a district court judgment dismissing his civil rights complaint filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

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*The Honorable George C. Smith, United States District Judge for the Southern District of Ohio, sitting by designation.

Seeking declaratory relief, Arnett filed a complaint against the United States of America and the National Highway Traffic Safety Administration (NHTSA), alleging that the defendants violated his due process rights by passing laws requiring that automobile manufacturers install air bags in their vehicles. Arnett argued that air bags are responsible for the injury and deaths of numberous motorists, and he requested that: 1) the district court issue orders declaring such laws unconstitutional; 2) the district court issue orders prohibiting automobile manufacturers from installing air bags in their vehicles, and requiring the manufacturers to recall all vehicles with air bags in order to deactivate the air bags; and 3) the district court issue an order appointing an independent counsel to investigate the activity of the NHTSA. Upon review, the district court granted the defendants' motion to dismiss because Arnett lacked standing to pursue his claim; the court also noted that it lacked authority to issue the requested orders. Arnett has filed a timely appeal, essentially reasserting his claim.

Initially, we note that Arnett attempted to file this complaint on behalf of seven deceased individuals, as well as himself. However, he has not presented any documents idicating that he has authority to file the complaint on behalf of the named individuals. *See Connection Distrib. Co. v. Reno,* 154 F. 3d 281, 295 (6th Cir. 1998) (generally a party may not assert rights or interests of third parties). Hence, the district court properly construed the complaint as filed only on Arnett's behalf.

Upon review, we conclude that the district court properly dismissed Arnett's complaint for the reasons stated in its memorandum opinion filed on January 16, 1998. *See Barrus v. Sylvania*, 55 F. 3d 468, 469 (9th Cir. 1995); *Hackford v. Babbitt,* 14 F. 3d 1457, 1465 (10th Cir. 1994). A review of the record reflects that Arnett lacks standing to pursue his claim because he did not allege and prove a distinct and palpable injury, he did not establish that his alleged injury is fairly traceable to the defendants' conduct, and he did not establish that there is a substantial probability that his

claimed injury would be redressed by his requested relief. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S 83,___, 118 S. Ct. 1003, 1016-18 (1998).

Accordingly, we affirm the district court's judgment. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Clerk